

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

| | | |
|--------------------------------|---|-----------------------|
| RAYMOND L. BRUTON, |) | |
| |) | |
| Plaintiff, |) | C.A. No.: 06-736- SLR |
| |) | |
| v. |) | |
| |) | |
| DIRECTOR JAY SYLVESTER, et al. |) | TRIAL BY JURY |
| |) | OF SIX DEMANDED |
| Defendant. |) | |

**DEFENDANT JAY SYLVESTER'S
MOTION TO DISMISS PURSUANT TO F.R.C.P. 12(b)(6)**

Defendant, Jay Sylvester, by and through his undersigned counsel hereby files this Motion to Dismiss and in support thereof avers as follows:

1. Pro Se inmate Plaintiff Bruton filed the instant complaint on December 4, 2006 setting forth claims of purported violations of his civil rights while incarcerated at the Howard R. Young Correctional Institution. A true and correct copy of Plaintiff's Complaint is attached hereto marked Exhibit "A".

2. Following the Court's review of Plaintiff's Complaint, on April 11, 2007, the Court issued a Memorandum Order dismissing all claims against all defendants, except Jay Sylvester, the Moving Defendant herein.

3. A review of Plaintiff's Complaint appears to make claims against Defendant Sylvester, the Director of the Key Program, but only referencing Mr. Sylvester once in his Complaint – for the proposition that Mr. Sylvester 'blamed' the Department of Corrections for the exercise schedule. Even taking a liberal view of the pro se complaint, there does not appear to be any other specific allegations against Mr. Sylvester. See, Complaint as Exhibit

“A”.

4. As interpreted by Defendants, Plaintiff appears to make claims for purported violations of his Eighth and Fourteenth Amendment Rights. See, Complaint as Exhibit “A”.

5. Plaintiff’s alleged claims for purported violations of his Eighth Amendment Rights stem from a lack of exercise, leading to adverse effects upon his health and medical condition. Accordingly, Defendant will address both the purported lack of exercise and deliberate indifference to his medical needs.

6. Based upon the facts as alleged in Plaintiff’s Complaint, his claims are insufficient to support an Eighth Amendment Violation for lack of exercise, and therefore, his claims should be dismissed, as a matter of law.

7. Based upon the facts as alleged in Plaintiff’s Complaint, his claims are insufficient to support an Eighth Amendment Violation for deliberate indifference to medical needs, and therefore, his claims should be dismissed, as a matter of law.

8. Plaintiff has failed to set forth sufficient facts to support purported violations of his Fourteenth Amendment Rights, for either a substantive or procedural due process claim. Accordingly, Plaintiff’s claims should be dismissed, as matter of law.

9. In order to bring a claim for purported civil rights violations, a prisoner must first exhaust all administrative remedies, including appeals thereof, before bringing a claim.

10. Plaintiff failed to exhaust his administrative remedies, and therefore, his claims must be dismissed, as a matter of law.

11. Plaintiff’s claims against Defendant Sylvester in his supervisory capacity fail, as a matter of law.

WHEREFORE, Defendant Jay Sylvester requests that Plaintiff's Complaint be dismissed, as a matter of law.

Reger Rizzo Kavulich & Darnall LLP

By: /s/ Rochelle Libid Gumapac
Rochelle Libid Gumapac, Esquire
Bar I.D. No. 4866
Suite 202
1001 Jefferson Street
Wilmington, DE 19801
(302) 652-3611 (phone)
(302) 652-3620 (fax)
rgumapac@rrkdlaw.com
Attorneys for Defendant,
Jay Sylvester

Dated: June 15, 2007

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

| | | |
|--------------------------------|---|-----------------------|
| RAYMOND L. BRUTON, |) | |
| |) | |
| Plaintiff, |) | C.A. No.: 06-736- SLR |
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| |) | |
| DIRECTOR JAY SYLVESTER, et al. |) | TRIAL BY JURY |
| |) | OF SIX DEMANDED |
| Defendant. |) | |

ORDER

AND NOW, this ____ day of _____, 2007, upon consideration of Defendant Sylvester's Motion to Dismiss and Plaintiff's response thereto, if any, it is hereby ORDERED and DECREED that said Motion is GRANTED and Plaintiff's Complaint is dismissed, with prejudice.

By The Court:

J.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

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| RAYMOND L. BRUTON, |) | |
| |) | |
| Plaintiff, |) | C.A. No.: 06-736- SLR |
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| |) | OF SIX DEMANDED |
| Defendant. |) | |

CERTIFICATE OF SERVICE

I, Rochelle Gumapac, Esquire hereby certify that on the 15th day of June 2007 a true and correct copy of Defendant Sylvester's Motion to Dismiss was electronically filed and served via first class mail, postage prepaid, upon:

Raymond L. Bruton
SBI #069025
Unit 2-Q-21
H.R.Y.C.I.
PO Box 9561
Wilmington, DE 19809

Reger Rizzo Kavulich & Darnall LLP

By: /s/ Rochelle Libid Gumapac
Rochelle Libid Gumapac, Esquire
Bar I.D. No. 4866
Suite 202
1001 Jefferson Street
Wilmington, DE 19801
(302) 652-3611 (phone)
(302) 652-3620 (fax)
rgumapac@rrkdllaw.com
Attorneys for Defendant
Jay Sylvester

EXHIBIT "A"

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(Rev. 5/05)

**FORM TO BE USED BY A PRISONER IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. §1983**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

(1) Raymond L. Bruton, SBI#069025
(Name of Plaintiff) (Inmate Number)

H.R.Y.C.I., P.O. Box 9561, WILM. DE
(Complete Address with zip code)

(2) _____
(Name of Plaintiff) (Inmate Number)

06-736

(Case Number)

(to be assigned by U.S. District Court)

(Complete Address with zip code)

(Each named party must be listed, and all names
must be printed or typed. Use additional sheets if needed)

vs.

CIVIL COMPLAINT

(1) Russel D. Buskirk

(2) CivGenics

(3) CSM Medical Division
(Names of Defendants)

☒ Jury Trial Requested
X

(Each named party must be listed, and all names
must be printed or typed. Use additional sheets if needed)

DEC 04 2006

I. PREVIOUS LAWSUITS

- A. If you have filed any other lawsuits in federal court while a prisoner, please list the caption and case number including year, as well as the name of the judicial officer to whom it was assigned: R6

Civ. NO 00ev-01032, JJF, 2000, December

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Addictional Defendants

Director Jay Sylvester
CiviGenics Key Program (N)
H.R.Y.C.I.
PO Box 9561
Wilmington, DE 19809

Warden Raphael Williams
H.R.Y.C.I., POBox 9561
Wilmington, DE 19809

Mr. Stanely W. Taylor Jr.
Commissioner of Prison
245 Mckee Road
Dover, DE 19904

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II. EXHAUSTION OF ADMINISTRATIVE REMEDIES

In order to proceed in federal court, you must fully exhaust any available administrative remedies as to each ground on which you request action.

- A. Is there a prisoner grievance procedure available at your present institution? ☒ Yes ☐ No
- B. Have you fully exhausted your available administrative remedies regarding each of your present claims? ☒ Yes ☐ No
- C. If your answer to "B" is Yes:
1. What steps did you take? I talk to my Counselors in the Key Program, wrote Grievances to Sgt. Moody,
 2. What was the result? Nothing was done by anyone:
- D. If your answer to "B" is No, explain why not: _____

III. DEFENDANTS (in order listed on the caption)

- (1) Name of first defendant: Russel D. Buskirk
 Employed as CSMigenics- DE State Office
 Mailing address with zip code: 300 Water Street, Dover DE, 19904
- (2) Name of second defendant: James Inciadi,
 Employed as CSM Medical Division at University of Delaware
 Mailing address with zip code: H.R.Y.C.I., P.O. Box 9561, Wilm. DE
19809
- (3) Name of third defendant: Warden Rapael Williams
 Employed as Warden at H.R.Y.C.I., P.O. Box 95
 Mailing address with zip code: 61, Wilmington, DE 19809

(List any additional defendants, their employment, and addresses with zip codes, on extra sheets if necessary)

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IV. STATEMENT OF CLAIM

(State as briefly as possible the facts of your case. Describe how each defendant is involved, including dates and places. Do not give any legal arguments or cite any cases or statutes. Attach no more than three extra sheets of paper if necessary.)

1. SEE Attach Statement of Facts:

2. SEE Attached Statement of Facts:

3. SEE Attached Statement of Facts:

V. RELIEF

(State briefly exactly what you want the Court to do for you. Make no legal arguments. Cite no cases or statutes.)

1. Plaintiff respectfully request of the Court to be compensated and request
punitive damages against the defendants for their willful
violation of Plaintiff rights to have exercise and the right
right to breathe fresh air which denied Petitioners his
14 Amendment and under his Eight Amendment created cruel

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Key North Correctional Recovery Program Residents Weekly Schedule

| Day/Time | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday | Sunday |
|----------------------|----------------------------|------------------------------------|-----------------------------------|-----------------------------------|---|---|-----------------------|
| 0600 | Lights ON | Lights ON | Lights ON | Lights ON | Lights ON | Lights ON | Lights ON |
| 0630 | Breakfast | Breakfast | Breakfast | Breakfast | Breakfast | Breakfast | Breakfast |
| 0700 | Count | Count | Count | Count | Count | Count | Count |
| 0740 | Shower & Shave | Shower & Shave | Shower & Shave | Shower & Shave | Shower & Shave | Shower & Shave | Shower & Shave |
| 0800 | Count | Count | Count | Count | Count | Count | Count |
| 0830 | Education | Education | Education | Education | Education | | |
| 0830 - 0900 | Inspection | Inspection | Inspection | Inspection | Inspection | AM Meeting | AM Meeting |
| | AM Meeting | House I - Community Meeting | AM Meeting | House II - Community Meeting | AM Meeting | | |
| 0900-1100 Session I | House I & II Committees | House II All Phases Peer Awareness | House I All Phases Peer Awareness | House I & II All Phases | All Phases Recreation Recovery Activities Committee | House I & II Phase I only Seminar | Individual Counseling |
| | Testing for Phase Movement | House I Commissary | House II Commissary | | | | |
| 1130 | Count | Count | Count | Count | Count | Count | Count |
| 1200 | Lunch | Lunch | Lunch | Lunch | Lunch | Lunch | Lunch |
| 1300-1430 Session II | House I & II All Phases | House II All Phases Self Discovery | House I & II All Phases | House I All Phases Self Discovery | House I & II All Phases Learn to Deal | House I & II Phase I only Intro to 12 Steps | Recovery Activities |
| | | | | | | | Journaling |
| 1500 & 1600 | Count | Count | Count | Count | Count | Count | Count |
| 1615 | Dinner | Dinner | Dinner | Dinner | Dinner | Dinner | Dinner |
| 1700-1730 | Committee Meeting | Individual Counseling | Committee Meeting | Individual Counseling | Committee Meeting | Individual Counseling | Individual Counseling |
| 1730-1830 | Individual Counseling | House I & II AA/NA | House I & II AA/NA | House I & II Phase III - RePac | House II only AA/NA | House I only AA/NA | House I & II AA/NA |
| 1800-1930 | | | | | House I Recreation | House II Recreation | |
| 2000-2030 | PM Meeting | PM Meeting | PM Meeting | PM Meeting | PM Meeting | PM Meeting | PM Meeting |
| 2300 | Lights OFF | Lights OFF | Lights OFF | Lights OFF | Lights OFF | Lights OFF | Lights OFF |

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2. and unusual punishment by not affording Petitioner his
right to breath good clean air and exercise,
3. And finally, defendants denied Plaintiff in the Key Program
North, of life, liberty or property, without due process
of law, and denied Plaintiff within its jurisdiction the
equal protection of the law.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 20 day of November, 2006.

Raymond L. Braton

(Signature of Plaintiff 1)

(Signature of Plaintiff 2)

(Signature of Plaintiff 3)

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STATEMENT OF FACTS

On August 30, 2005, Petitioner sign a contract to follow the rules and regulation of the Key(n) Program, upon Petitioners daily schedule, no rules of recreation were included in the normal routine of morning and afternoon classes that we as residents faithfully had to attend.

Petitioner has a history of chronic High Blood Pressure. Petitioner take High Blood pressure medicine daily. Petitioner has also been diagnose for diabetes# 2 and Petitioner takes diabetes medicine twice a day.

Because Petitioner was not allowed outside for fresh air on a daily basis nor allowed to go to the gym for exercise on a daily basis, petitioner's health suffered. Petitioner graduated the Key Program (N). Petitioner was in the Key (N) Program from August 30 2005, until May 26, 2006. Petitioner actually left the Key (N) Program on July 8, 2006. During that entire period, Petitioner was allowed to go to the exercise yard around (7) to (8) times in the Key(N) Program. Furthermore, Petitioner was allowed to the Gym no more than 10 times during his stay in the Key(N) Program.

Petitioner complain to everyone, Petitioner wrote grievances and petition the Key(N) Program's staff. However, no body would allow the Key Residents to exercise outside in the exercise yard or go to the gym on a normal day to day, 1 hour recreation schedule as petitioner should have had because of Petitioners chronic sickness. Exercise is an important part of Chronic illness, 1/2 half hour of walking a day, the doctors orders, Petitioner to do. The only walking Petitioner was allowed to do was walking to the groups in the Key arena and back to Petitioners bunk in the Dorm# 1 an Dorm# 1 area, when Petitioner was moved for their own personal reason.

The Dorm# 1 and Dorm# 2 were totally without any air from the outside. The windows were closed up no one could get a good direct view from outside and no sunshine what so ever. We were not allowed to have a radio and the TV we had was taken so often, you got use to not viewing a TV at all.

The eleven months Petitioner was living in the Key(N) Dorm#1 and Dorm#2 were eleven of the worst months in Petitioner's life. Petitioners medicine was increased because of the lack of exercise. Petitioners body suffered with weight gain which is not good for a chronic patient to have because of the lack of exercise.

The Key(N) Program Director blame DOC for the lack of exercise provided to the Dorm#1 and Dorm#2, Director Jay Sylvester explain

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that DOC controlled the daily exercise which the residents were allow to have; And we had to live with it on the conditions. Never fully understanding whether DOC was at fault for the none commitment to exercise or was it the civil Genics Program for their lack of care in providing leadership which would have concern itself with the Key(N) problem of no exercise outside or in the Gym during the period of August 30, 2005, to July 8, 2006.



Raymond L. Bruton
SBI# 069025 Unit 2-Q-21
H.R.Y.C.I., POBox 9561
Wilmington, DE 19809

Date: November 28 , 2006

_____ This complaint is addressed in the Inmate Handbook. Refer to the handbook page _____ for clarification and/or direction.

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___ Action request is inappropriate or not completed. Inmate must make an actual request, such as, request that an investigation be conducted (inmates are not forwarded results of investigations that involve staff conduct).

___ Documentation must be attached to the grievance when it is resubmitted that supports allegations/complaint, such as commissary receipts, Form 537, etc. The IGC will make copies of items submitted with the grievance and return the originals to the inmate.

___ This complaint should be addressed by submitting a sick call slip. If you are experiencing any type medical condition, please submit a sick call slip.

___ Other: Requests are not processed through the grievance procedure.

___ Other: Please be advised that you have submitted your grievance on the wrong form. Please re-submit using the correct grievance form.

cc: file